

SENATE No. 2123

The Commonwealth of Massachusetts

PRESENTED BY:

Robert A. O’Leary

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act establishing the Nantucket Community Housing Bank.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert A. O’Leary	Cape and Islands
Timothy Madden	Barnstable, Dukes and Nantucket
Cleon H. Turner	1st Barnstable

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01773 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT ESTABLISHING THE NANTUCKET COMMUNITY HOUSING BANK.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. For the purposes of this act, the words and phrases set forth in this section shall
2 have the following meanings:

3 "Community Housing", rental and home ownership housing units for use by those residents of Nantucket
4 earning 150 per cent or less of the median household income for Nantucket county, as calculated and
5 adjusted for household size annually by the federal Department of Housing and Urban Development
6 (HUD); this percentage of median income, should economic conditions warrant a change, can be adjusted
7 by a majority vote of the housing bank commission.

8 "Eligible Applicants", non-profit and for-profit corporations and organizations, individuals, and public
9 entities.

10 "Housing Bank", the Nantucket Community Housing Bank, established by section 2.

11 "Housing Bank Commission", the Nantucket Community Housing Bank Commission, established by
12 section 3.

"Legal representative", with respect to any person, shall mean any other person acting under a written power-of-attorney executed by that person, but any affidavit attesting to the true and complete purchase price of real property, submitted to the housing bank commission under section 9, may also be signed on behalf of that person by an attorney admitted to practice in the commonwealth.

"Purchaser", the transferee, grantee or recipient of any real property interest.

"Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or a seller's nominee, or for the seller's benefit, for the transfer of any real property interest, including, but not limited to, all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or the seller's nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer but excluding real estate taxes or other municipal liens or assessments which are not overdue at the time of the transfer; and the fair market value at the time of transfer of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for the real property interest.

"Real property interest", any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property; the interest of a partner or member in a partnership or limited liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real property, and the transferable development rights created under Massachusetts General Laws chapter 183A; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years

having a term of less than thirty years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

"Seller", the transferor, grantor or immediate former owner of any real property interest.

"Time of transfer", of any real property interest shall mean, the time that the transfer is legally effective between the parties to the transfer, and, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district, not later than the time of the recording or filing.

SECTION 2. There shall be a Nantucket Community Housing Bank, to be administered by a housing bank commission established by section 3, for the purpose of providing funding for community housing as set forth in section 5. The Housing Bank shall be a body politic and corporate and a public instrumentality, and the exercise of the powers conferred upon the Housing Bank by this act shall be considered to be the performance of an essential governmental function.

SECTION 3. (a) The Nantucket Community Housing Bank shall be administered by a housing bank commission consisting of five (5) members who are legal residents of Nantucket, each person to be elected to a three (3) year term, in the same manner as other elected town officials. The Nantucket board of selectmen shall appoint the initial five members to serve from the effective date of this act until the first elections of the regular members at the town's regular or special town election after the effective date of this act. The initial terms, which will be drawn by lot by the initial five appointed members, shall be staggered so that two members are elected each year, and in the third year, one member elected, such elections following the initial election.

(b) Vacancies: Should a vacancy occur during the term of any elected town member, the housing bank commission and the board of selectmen shall jointly appoint an interim member to serve until the next scheduled town election.

(c) Administration: Members shall serve without compensation. The initial appointed members shall adopt temporary rules and regulations to the extent necessary to conduct business until the regular members are elected. The housing bank commissions shall elect a chairman and a vice chairman from among their regular members and shall elect a secretary and a treasurer who may be the same person, and who need not be members of the housing bank commission. The members of the housing bank commissions shall adopt, after holding a public hearing, rules and regulations for conducting its internal affairs and procedural guidelines for carrying out its responsibilities under this act.

(d) Quorum: A quorum for the Nantucket Community Housing Bank Commission shall be three or more members. Decisions of the Housing Bank Commission

shall be by majority vote at a meeting where a quorum is present. The Housing

Bank Commission may make rules regarding attendance. The Housing Bank

Commission shall keep accurate records of its meetings and actions and shall file annual reports that shall be distributed with the annual report of the Town of Nantucket. The Housing Bank Commission shall be classified as a municipal agency for purposes of chapter 268A of the General Laws, and be subject to the open meeting law (chapter 39, sections 23A, 23B and 23C of the General laws).

SECTION 4A. The housing bank commission shall (a) provide funding as has been first approved by an annual or special town meeting of the town of Nantucket, in the form of grants, loans, loan guarantees, lines of credit, interest subsidies, rental assistance or any other means determined to further the goals of the housing bank for eligible community housing activities under section 5, (b) accept gifts of funds to further the purposes of the housing bank; (c) prepare an annual budget, provided however no more than 5% of all funds received by the housing bank during any fiscal year may be spent for administration purposes without approval by an annual or special town meeting of the town of Nantucket, (d) hire staff and obtain professional services that are necessary in order to perform its duties; (e) adopt regulations and procedures that it considers necessary or appropriate, subject to this act, regarding the use

and investment of its funds and the keeping of records and accounts; (f) adopt procedures in the form of rules and regulations that it considers necessary or appropriate setting forth its programmatic goals, policies and recommendations to serve as standards for decisions to provide funding for programs under section 5, provided however, such procedures shall not take effect until approved by an annual or special town meeting of the town of Nantucket; and (g) enter into and enforce contracts that it considers necessary to achieve the goals of this legislation.

SECTION 4B. The Town of Nantucket may appropriate money to be deposited in the Nantucket Housing Fund as provided in said section 7A. The Town of Nantucket is hereby further authorized to provide funds to repay any notes or bonds of the town issued pursuant to this section and, when authorized by a two thirds vote of town meeting as defined in G.L. Chapter 44. section. 1, to incur debt of the town for such purposes in accordance with the provisions of G. L. Chapter 44, section 7(3).

SECTION 4C. The housing bank may issue bonds and notes to further the purposes of the housing bank but only if the issuance of these bonds or notes has been approved by a two thirds majority vote at a Nantucket town meeting. The proceeds of such bonds or notes may be used to pay, in whole or in part, for the purposes set forth in section 4A of this act, reserves for debt service and other expenses, to pay consulting appraisal advisory and legal fees and costs incidental to the issuance and sale of such bonds and notes, to purchase, refund or renew bonds or notes previously issued and to pay an other costs and expenses of the housings bank commission necessary for the accomplishment of its purposes. Bonds or notes issued pursuant to this act shall be authorized by the commission which shall have full power and authority to determine the amount, form, terms, conditions, provisions for payment of interest and all other details thereof and to provide for the sale and issuance at such price and in such manner as the Commission shall determine subject only to any limitation set forth in this Act. Unless the town of Nantucket shall have authorized by two-thirds vote of a town meeting the pledging of the full faith and credit of the town or county of Nantucket to secure an issue of bonds or notes of the housing bank, all bonds or notes issued hereunder shall be payable solely from the fees and other revenues of the housing

bank pledged to their payment and shall not be deemed a pledge of the full faith and credit of the Town or County of Nantucket, the Commonwealth of Massachusetts or any political subdivision thereof.

The Housing Bank Commission may enter into any agreements, including without limitation a loan agreement and a trust agreement, necessary to effectuate and to secure any bonds or notes issued by the housing bank. Such agreements may pledge or assign, in whole or in part, the revenues and other money held or to be received by the housing bank. Such agreements may contain such provisions for protecting and enforcing the rights, security and remedies of the holders of such bonds or notes, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities and covenants setting forth the duties of, and limitations on, the housing bank in relation to the custody, safeguarding, investment and application of money, the issuance of additional debt obligations, the use of any surplus proceeds of the borrowing, including any investment earnings thereon, and establishment of special funds and reserves.

The pledge of any such agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made; the revenues, money, rights and proceeds so pledged and then held or thereafter acquired or received by the housing bank shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act; and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the town or county, irrespective of whether such parties have notice thereof. No document by which a pledge is created need be filed or recorded except in the records of the housing bank and no filing need be made under the Uniform Commercial Code.

The trustee with respect to any such trust agreement entered into pursuant to this section shall be a trust company or a bank having the powers of a trust company within the commonwealth. Any such trust agreement may provide that any money received thereunder may be held, deposited or invested by the trustee, notwithstanding the provisions of section 7A pending the disbursement thereof, in any deposits or

investments which are lawful for the funds of savings banks and shall provide that any officer with whom or any bank or trust company with which such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof and thereof, subject to such regulation or limitation as this act or such trust agreement may provide.

It shall be lawful for any bank or trust company within the Commonwealth to act as depository of the proceeds of bonds or notes, revenues or other money hereunder and to furnish such indemnifying bonds or to pledge such security, if any, as may be required by the Commission. Any trust agreement entered into pursuant to this section may set forth the rights and remedies of the holders of any bonds or notes and of the trustee and may restrict the individual rights of action by any such holders. In addition to the foregoing, any such trust agreement may contain such other provisions as the Commission may deem reasonable and proper. All expenses incurred in carrying out the provisions of such trust agreement may be treated as part of the cost of operation of the housing bank and paid from the revenues or other funds pledged or assigned to the payment of the principal of and the premium, if any, and interest on the bonds or notes or from any other funds available to the housing bank. In addition to other security provided herein or otherwise by law, bonds or notes issued under this section may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the housing bank by any bank, trust company or other financial institution, within or without the Commonwealth, and the housing bank may pledge or assign any of its revenues as security for the reimbursement by the housing bank to the issuers of such letters or lines of credit, insurance or credit facilities of any payments made thereunder.

SECTION 4D. If at any time any principal or interest is due or about to come due on any bonds or notes of the housing bank to secure which the full faith and credit of the town of Nantucket or Nantucket county shall have been pledged and funds to pay the same are not available, the Commission shall certify to the town treasurer and selectmen of the town or to the county treasurer and county commissioners of the county, as appropriate, the amount required to meet such obligations and the town

158 treasurer or the county treasurer shall thereupon pay over to the housing bank the amount so certified
159 from any funds in the treasury. For the purpose of providing or restoring to the treasury the sums so paid
160 over to the housing bank, the town treasurer, with the approval of the selectmen, is authorized to incur
161 debt outside the town's debt limit and issue notes therefore for a period not exceeding two years and to
162 renew or refund the same from time to time until the town shall have received from the housing bank
163 sufficient funds to repay such notes and the interest thereon in full. Whenever the town or the county
164 shall have been required to pay over any sums of money to the housing
165 bank under this section, the housing bank shall be precluded from issuing any grants or purchasing,
166 constructing or making improvements to land or housing, or issuing any of its bonds or notes for purposes
167 other than repaying the town, until the housing bank shall have repaid the town in full for all sums paid to
168 the housing bank hereunder, including interest on any notes issued for such purpose, unless the town shall
169 have appropriated sufficient funds for such purpose at a town meeting.

170 SECTION 4E. Bonds and notes issued under the provisions of this act are hereby made securities
171 in which all public officers and public bodies of the Commonwealth and its political subdivisions, all
172 insurance companies, trust companies in their commercial departments, savings banks, cooperative banks,
173 banking associations, investment companies, executors, administrators, trustees and other fiduciaries may
174 properly and legally invest funds, including capital in their control or belonging to them. Such bonds and
175 notes are hereby made securities that may properly and legally be deposited with and received by any
176 state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for
177 which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by
178 law.

179 SECTION 4F. Notwithstanding any of the provisions of this act or any recitals in any bonds or
180 notes issued under this act, all such bonds and notes shall be deemed to be investment securities under the
181 Uniform Commercial Code.

182 SECTION 4G. The Housing Bank's revenues and income will be used solely for the furtherance
183 of its public purposes and shall be exempt from taxation. The Housing Bank and all its revenues, income
184 and real and personal property used solely by the Housing Bank in furtherance of its public purposes from
185 the date of acquisition thereof, shall be exempt from taxation and from betterments and special
186 assessments and the Housing Bank shall not be required to pay any tax, excise or assessment to or for the
187 Commonwealth or any of its political subdivisions. Bonds and notes issued by the Housing Bank, their
188 transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be
189 exempt from taxation within the Commonwealth.

190 SECTION 4H. With authorization of an annual or special town meeting of the town of Nantucket
191 as provided for in section 4C of this Act, bonds and notes may be issued under this act without obtaining
192 the consent of any department, division, commission, board, bureau or agency of the town or county of
193 Nantucket, except that the full faith and credit of the town or county of Nantucket shall not be pledged for
194 the payment of such bonds or notes unless such pledge shall have been authorized by a two-thirds vote as
195 provided in this Act, and without any other proceedings or the happening of any other conditions or
196 things than those proceedings, conditions or things which are specifically required therefore by this act.
197 The validity of and security for any bonds and notes issued by the housing bank shall not be affected by
198 the existence or nonexistence of any such consent or other proceedings, conditions or things.

199 SECTION 5. The Nantucket Community Housing Bank shall be a funding agency only, but may
200 acquire by purchase, lease or gift offices for its operation, and may enter into leasebacks, mortgages or
201 other loans for this purpose. Upon receiving applications from eligible applicants in a competitive process
202 which will include public notice of funding availability, and in a form prescribed by the commission, and
203 upon compliance with the provisions of section 4A of this Act, the housing bank will provide funding for
204 eligible community housing activities as defined below, while respecting special Nantucket habitats and
205 rural character. The housing bank shall, wherever possible, give preference to (a) the reuse of existing
206 buildings, and (b) construction of new buildings on previously developed sites.

207 Eligible community housing activities for receipt of funding shall include, but not be limited to, the
208 following:

209 (a) Purchase and rehabilitation of existing structures for rental or home ownership;

210 (b) Construction of rental or home ownership housing and necessary on-site or off site infrastructure,
211 including mixed use development;

212 (c) Purchase of land, and any and all improvements including easements;

213 (d) Down payment assistance, grants and soft second loans;

214 (e) Rental assistance programs;

215 (f) Modernization and capital improvements of existing rental and ownership housing;

216 (g) Creation of apartments and other ancillary housing;

217 (h) Housing counseling, predevelopment costs and technical assistance associated with creating
218 community housing projects and programs; and

219 (i) Mixed -use development projects.

220 SECTION 6. All housing units created by funding from a housing bank under this act shall be
221 deed restricted in perpetuity for use as community housing as defined in section 1 of this act, except in
222 cases when the housing bank commission determines that a deed restriction is not feasible, and except in
223 cases when the housing bank commission makes a finding that such a deed restriction would delay,
224 prevent or otherwise defeat the purpose of developing and making available to the public Community
225 Housing.

226 SECTION 7A. The Housing Bank Commission shall meet its financial obligations by drawing
227 upon a fund to be set up as a revolving or sinking account of the housing bank commission in the treasury

of the Town of Nantucket. Deposits into the Nantucket Housing Fund shall include (a) funds appropriated, borrowed or transferred to be deposited into the fund by vote of the county commissioners of Nantucket county or of the town meeting; (b) voluntary contributions of money and other liquid assets to the fund; and (c) revenues from fees imposed upon the transfer of real property interests under section 9 occurring on Nantucket after the effective date of this act as set forth in section 15. Grants or gifts of money or other assets to the housing bank shall be subject to any restrictions or limitations imposed by the grantor or donor. All expenses lawfully incurred by the Housing Bank Commission in carrying out this act shall be evidenced by proper vouchers and shall be paid by the treasurer of the town of Nantucket only upon submission of warrants duly approved by the housing bank commission. The housing bank commission treasurer shall prudently invest available assets of the fund under the regulations and procedures adopted by the housing bank commission under clause (f) of section 4A, and all income from investments shall accrue to the fund.

SECTION 7B. The Housing Bank Commission is authorized to enter into one or more agreements with the Nantucket Land Bank Commission established by chapter 669 as amended of the acts and resolves of 1983 by which agreements the housing bank may delegate to the Nantucket Land Bank Commission the administration and management of collection of the fee described in section 9 of this act, including but not limited to the record keeping duties pursuant to section 8 of this act, the receipt of money pursuant to section 9 of this act, the processing of applications for exemptions pursuant to section 11 of this act or processing applications for refunds pursuant to section 10 of this act, the imposition of interest or penalties pursuant to section 12 of this act, and the sending of notices and conduct of hearings pursuant to section 13 of this act, and provide for compensation or reimbursement of costs incurred by such Nantucket Land Bank Commission from funds so collected.

SECTION 8. The housing bank commission shall keep a full and accurate account of its actions including a record of when, from or to whom, and on what account money has been paid or received under this act. These records shall be subject to examination by the director of accounts or the director's

agent under section 45 of chapter 35 of the General Laws. There shall be an annual audit conducted by a duly recognized accounting firm, and a copy of that audit shall be distributed to the Board of Selectmen of the Town of Nantucket. However, schedules of beneficiaries of trusts, lists of stockholders of corporations, lists of partners, partnership agreements, tax returns, and other materials deemed by the Commission to be private to a particular entity or individual, which are filed with the Commission for the purposes of determining or fixing the amount of fee imposed by this Act for any transfer or for the purpose of determining the existence of any exemption pursuant to this act shall not be public records for the purposes of section 10 of chapter 66 of the General Laws.

SECTION 9. There is hereby imposed a fee equal to one per cent of the purchase price upon the transfer of any interest in real property located within the Town of Nantucket. The fee shall be the liability of the seller of the real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing this fee shall not affect the liability of the seller. This fee shall be paid to the Nantucket Community Housing Bank Commission or its designee. Fees shall be accompanied by a copy of the deed or other instrument evidencing the transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the seller or the seller's legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed. The Housing Bank Commission, or its designee, shall promptly execute and issue a certificate stating that the appropriate fee has been paid or that the transfer is exempt from the fee and stating the basis for the exemption. The register of deeds for Nantucket county, and the assistant recorder for the registry district of Nantucket county, shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, for any real property interest located in Nantucket unless this certificate is attached. Failure to comply with this requirement shall not affect the validity of any instrument. The Housing Bank commission shall deposit all fees received under this section with its

treasurer as part of the fund established by section 7A. The fee imposed under this section shall be due at the time of transfer of the real property interest.

SECTION 10. At any time within seven days after the issuance of the certificate of payment of the fee imposed by section 9, the seller or the seller's legal representative may return the certificate to the Housing Bank Commission or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer has not been consummated. After receiving this certificate and affidavit, the housing bank commission shall in due course return the fee to the seller or the seller's legal representative.

SECTION 11. The following transfers of real property interests shall be exempt from the fee established by section 9. Except as otherwise provided, the seller shall have the burden of proof that any transfer is exempt under this section and any otherwise exempt transfer shall not be exempt in the event that such transfer (by itself or as part of a series of transfers) was made for the primary purpose of evading the fee imposed by Section 9.

(-a-) Transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies or subdivisions, including but not limited to transfers to the Town of Nantucket, the County of Nantucket, and/or the Nantucket Land Bank Commission established pursuant to chapter 669 of the Acts of 1983 as amended or the Housing Bank established by this Act.

(-b-) Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

(-c-) Transfers made as gifts without consideration. In any proceeds to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the seller to have been paid or transferred, if the purchaser shall have been at the time of

transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer.

(-d-) Transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

(-e-) Transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.

(-f-) Transfers made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws.

(-g-) Transfers to any charitable organization as defined in clause Third of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes.

(-h-) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

(-i-) Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the event that (i) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within

such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(-j-) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee receives property (including real property interests and other property received) which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer or (ii) with respect to a partnership or limited liability company, the transferee receives property (including real property interests and other property received) which is the same fraction of the property of the partnership or limited liability company as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.

(-k-) Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

(-l-) Transfers of property consisting in part of real property interests situated in Nantucket County and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in Nantucket county; provided that the purchaser shall furnish the Commission with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers.

(-m-) The first \$2 million of the sale price of any transfer or series of transfers of real property interests in a single parcel. Said exemption may be adjusted for inflation as determined tri-annually by vote of the majority of the Nantucket Community Housing Bank commission. For purposes of this subsection, "inflation" shall mean the increases, if any, in the total of prices paid for real property transfers year to year for real property within the Town of Nantucket.

(-n-) Transfers of minority interests in corporations, trusts, partnerships or limited liability companies which are publicly traded, which trades are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

SECTION 11A. To be consistent with the Nantucket Community Housing Bank Act, the Nantucket Islands Land Bank Act (being chapter 669 of the Acts of 1983, as amended by chapter 407 of the Acts of 1984, by chapter 202 of the Acts of 1985, by chapter 666 of the Acts of 1987, by chapter 392 of the Acts of 1991, by chapter 309 of the Acts of 1994, by chapter 370 of the Acts of 2002, and by chapter 130 of the Acts of 2006, referred to collectively as the "Land Bank Act") is hereby amended as follows:

(a) The definition of "Real property interest" appearing in Section 1 of the Land Bank Act shall be restated in its entirety to the following:

"Real property interest", any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property; the interest of a partner or member in a partnership or limited liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real property, and the transferable development rights created under Massachusetts General Laws chapter 183A; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of less than thirty years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

(b) Section 10A of the Land Bank Act is hereby repealed in its entirety.

(c) The following sentence shall be inserted at the end of the preamble to Section 12 of the Land Bank Act: "Any otherwise exempt transfer shall not be exempt in the event that such transfer (by itself or as part of a series of transfers) was made for the primary purpose of evading the fee imposed by Section 10."

(d) Section 12 (-i-) of the Land Bank Act shall be amended by deleting the portion thereof commencing with "provided, however, that such . . ." through the end of subsection (-i-), and the following shall be inserted in lieu thereof:

provided, however, that such transfer shall be exempt only in the event that (i) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(e) Section 12 (-j-) of the Land Bank Act shall be entirely restated as follows:

Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee receives property (including real property interests and other property received) which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer or (ii) with respect to a partnership or limited liability company, the transferee receives property (including real property interests and other property received) which is the same fraction of the property of the partnership or limited liability company as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.

(f) Delete from Section 12 (-m-) of the Land Bank Act the words "The first" from the beginning of the subsection, and capitalize the word "an", which becomes the first word of the subsection.

(g) Add new subsection (-n-) to Section 12 of the Land Bank Act, as follows:

(-n-) Transfers of minority interests in corporations, trusts, partnerships or limited liability companies which are publicly traded, which trades are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

(h) Add new subsection (-d-) to Section 14 of the Land Bank Act, as follows:

(-d-) If the Commission has determined that a fee is due by asserting the application of the evasion of fee doctrine described in Section 12 of this Act, then the transferee shall have the burden of demonstrating by clear and convincing evidence as determined by the Commission that the transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than avoidance of the fee set forth in Section 10 of this Act and (ii) economic substance apart from the asserted fee avoidance benefit. In all such cases the transferee shall also have the burden of demonstrating by clear and convincing evidence as determined by the Commission that the asserted non-fee-avoidance business purpose is commensurate with the amount of the fee pursuant to Section 10 to be thereby avoided.

SECTION 12. A seller who fails to pay all or any portion of the fee established by section 9 on or before the time when the fee is due shall be liable for the following additional payments in addition to the fee:

(a) Interest. The seller shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to prime rate at the time of transfer plus 1 per cent per annum, adjusted each year in accordance with changes in prime rate.

(b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee imposed by section 9, fails to pay all or a portion of the fee within 30 days after the time of transfer, shall pay a penalty equal

to five per cent of the outstanding fee as determined by the housing bank commission for each month or portion of a month that the fee is not paid in full, but in no event shall the amount of any penalty imposed under this paragraph exceed 25 per cent of the unpaid fee due at the time of transfer. Whenever the housing bank commission determines that all or a portion of a fee due under section 9 was unpaid due to fraud with intent to defeat or evade the fee, a penalty equal to the amount of the fee as determined by the housing bank commission shall be paid by the seller in addition to the fee.

SECTION 13A. (a) The Housing Bank Commission shall notify a seller by registered or certified mail of any failure to discharge in full the amount of the fee due under section 9 and any penalty or interest assessed. The Housing Bank Commission shall grant a hearing on the matter of the imposition of the fee, or of any interest or penalty assessed, if a petition requesting a hearing is received by the Housing Bank Commission within 30 days after the mailing of the notice. If the Commission has determined that a fee is due by asserting the application of the evasion of fee doctrine described in section 11 of this Act, then the seller shall have the burden of demonstrating by clear and convincing evidence as determined by the Commission that the transaction possessed both: (i) a valid, good faith business purposes other than avoidance of the fee set forth in section 9 of this Act and (ii) economic substance apart from the asserted fee avoidance benefit. In all such cases the seller shall also have the burden of demonstrating by clear and convincing evidence as determined by the commission that the asserted non-fee-avoidance business purpose is commensurate with the amount of the fee pursuant to section 9 to be thereby avoided. The Housing Bank Commission shall notify the seller in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within 15 days after the hearing. Any party aggrieved by a determination of the Housing Bank Commission concerning a deficiency, penalty or interest may, after payment of the deficiency, appeal to the district or superior court within 3 months after the mailing of notification by the Housing Bank Commission.

Upon the failure to timely petition for a hearing, or appeal to the court, within the time limits established in this paragraph, the seller shall be bound by the terms of the notification, assessment or determination,

and shall be barred from contesting the fee or any interest and penalty, as determined by the Housing Bank Commission. All decisions of these courts shall be subject to appeal. Every notice to be given under this section by the Housing Bank Commission shall be effective if mailed by certified or registered mail to the seller at any available legal address of the seller, or at the address stated in a recorded or registered instrument by virtue of which the seller holds any real property interest, the transfer of which gives rise to the fee which is the subject of the notice; and, if no address is stated or if the transfer is not evidenced by an instrument recorded or registered in the public records of Nantucket County, the notice shall be effective when mailed to the seller in care of any person appearing of record to have had a fee interest in the land at the time of the transfer, at the address of that person as set forth in an instrument recorded or registered in Nantucket County.

(b) All fees, penalties and interest required to be paid under this act shall constitute a personal debt of the seller and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the housing bank commission subject to chapter 260 of the General Laws.

(c) Sellers applying for an exemption under subsections (a) through (n) of section eleven shall be required at the time of application for exemption to execute an agreement legally binding on sellers and separately legally binding upon any Legal Representative of the sellers (1) assuming complete liability for any fee, plus interest and penalties if any, waived on account of an allowed exemption subsequently determined to have been invalid, and (2) submitting to the jurisdiction of the trial court of the commonwealth sitting in Nantucket County. Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property transfer. Execution of the above-described agreement shall not be required of any mortgagee, pledge, purchaser or judgment creditor unless notice of the agreement has been recorded or filed by the Housing Bank Commission.

The Housing Bank Commission, without waiving any of its rights, may direct a civil action to be filed in the appropriate district or superior court division of the department of the trial court sitting in the

Nantucket county to enforce the agreement of the housing bank commission under this section with respect to this liability or to subject any property of the delinquent seller, or in which the delinquent seller has any legal or beneficial right, title or interest, to the payment of this liability.

The Housing Bank Commission may issue a waiver or release of any agreement imposed by this section. Such waiver or release shall be conclusive evidence that the agreement is extinguished.

SECTION 13B. This act, being necessary for the welfare of the town and county of Nantucket and its inhabitants, shall be liberally construed to effect its purposes.

SECTION 14. Any time after five years from the effective date of this act, the town may dissolve the housing bank by vote of the majority of the town members at town meeting, but the fee imposed by section 9 shall continue to be imposed until all funding commitments, including repayment of any bonds or notes, have been paid in full, and the Nantucket housing bank shall continue in existence during this time for the sole purpose of collecting and administering these fees. Upon dissolution of the Nantucket housing bank, title to all funds and other properties held by the housing bank shall vest in the town of Nantucket after provision is made for payment of all bonds, notes and other obligations of the housing bank. The Nantucket housing bank commission shall not submit an amendment of this act to the general court unless the amendment has been approved by the affirmative vote of a majority of the voters at a town meeting.

SECTION 15. Acceptance of this act shall be by the affirmative vote of a majority of the voters at any regular or special town election, or a state election, at which the question of acceptance has been placed on the ballot. This act shall become effective on the date on which acceptance by the town has been effected.